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In the Supreme Court of the United States

Supreme Court, U.S.
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OCTOBER TERM, 1970

No. [redacted] 70-47

FLORENCE DIFFENDERFER and NISHAN PAUL,
Appellants,

vs.

CENTRAL BAPTIST CHURCH OF MIAMI, FLORIDA, INCORPORATED, a non-profit Florida corporation; DADE COUNTY, FLORIDA, a political subdivision of the State of Florida; PORTER W. HOMER, County Manager; R. K. OVERSTREET, Tax Collector of Metropolitan Dade County, Florida; and FRED O. DICKINSON, JR., as Comptroller of the State of Florida,

Appellees.

On Appeal from the United States District Court for the Southern District of Florida

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

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Appellants appeal from the opinion and final judgment of the three judge United States District Court for the Southern District of Florida, entered on October 5, 1970, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the three judge United States District Court for the Southern District of Florida is not yet reported. Copies of the opinion of the three judge United States District Court, together with the Final Judgment have been attached hereto as Appendix A & B.

JURISDICTION

This suit was brought under 28 U.S.C. §§1331, 1343, 2201, 2202, and §1983 of 42 U.S.C. to enjoin the governmental tax exemption pertaining to the commercially utilized income producing real property owned by the defendant Central Baptist Church of Miami, Florida, Incorporated. A three judge United States District Court was convened pursuant to 28 U.S.C. §2281 and §2284. The opinion of the three judge United States District Court was entered on August 21, 1970, and the Final Judgment of the Court in favor of the defendants was entered on October 5, 1970. Notice of Appeal and Amended Notice of Appeal to the Supreme Court of the United States was filed on September 18 and October 7, 1970. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28 U.S.C., §1253.

QUESTIONS PRESENTED

A. Do the First and Fourteenth Amendments to the United States Constitution forbid governmental tax exemption to extend to church owned commercial business enterprises?

(1) Does the tax exemption granted by the defendant, Dade County, Florida, to the defendant, Central Baptist Church of Miami, Florida, on real property utilized six days and evenings of each week for commercial profit making purposes violate the First and Fourteenth Amendments to the U. S. Constitution prohibiting the establishment of religion and protecting the free exercise thereof?

STATUTES INVOLVED

F.S. 192.06 (3) and (4) as interpreted by **Central Baptist Church of Miami, Florida, Incorporated v. Dade County, Florida, 216 So.2d 4**, as set forth in Appendix C hereto.

STATEMENT

Appellants, who were the plaintiffs below filed suit in the United States District Court against the defendants, appellees below, as a result of the governmental tax exemption granted to one of the defendants, Central Baptist Church of Miami, Florida, Incorporated, by and

through the cooperation of the other defendants as it pertained to certain real property owned by the Central Baptist Church in Dade County, Florida. A Stipulation of Facts was entered into by the plaintiffs and the defendant Central Baptist Church. The following were included among the stipulated facts:

1. The defendant Central Baptist Church owned real property in Miami, Dade County, Florida which was being utilized six days and six evenings each week for a commercial profit making purpose as recognized in the opinion of the three judge United States District Court.

2. That the said commercial parking lot occupied approximately fifty-nine per cent of the church property.

3. That although this commercial parking lot operation brings in a substantial profit each year, the Dade County governmental authorities pursuant to F.S. 192.06 as interpreted by the Supreme Court of Florida in **Central Baptist Church of Miami, Florida, v. Dade County, Florida**, 216 So.2d 4, exempted the said commercial parking lot from taxation.

The Final Judgment was entered against the amended complaint filed by the plaintiffs which had charged violation of the First and Fourteenth Amendments to the United States Constitution by F.S. 192.06 (3) and (4) itself, on its face, and as interpreted, construed, and applied to the plaintiffs and all others similarly situated by the aforecited Florida Supreme Court decision. Plaintiffs herein also challenge the unconstitutional results obtained through the use of this statute wherein a profit making commercial parking lot is granted tax exempt status solely

as a result of its being owned by the defendant Central Baptist Church. The plaintiffs herein challenge only the commercial operated business, and not the property occupied by the church building itself. Stated another way, the amended complaint was not directed to the forty-one per cent of the property occupied by the church structures, but rather directed solely to the remaining fifty-nine per cent of the church owned real property maintained as a commercial parking lot six days and six nights of each week as stipulated to by the parties and as reflected in the opinion of the three judge United States District Court. Subsequent to the filing of motions for summary judgment and various briefs filed by the respective parties, the three judge U.S. District Court entered its opinion and thereafter its Final Judgment against the plaintiffs as to injunctive and other relief requested by the plaintiffs.

THE QUESTIONS ARE SUBSTANTIAL

The instant case was decided solely on the authority of **Walz v. Tax Commissioner of the City of New York**, 25 L.Ed.2d 697, 90 S.Ct. 1409. The Walz case pertained to property used exclusively for religious purposes, and the instant case pertains to property used as a commercial operation six days and six evenings of each week by the defendant Central Baptist Church of Miami, Florida. The U. S. District Court apparently had no difficulty in reconciling the distinct differences of the Walz case and the case at bar and, in fact, the following statement is made on page four of the opinion rendered by the three judge U. S. District Court in the instant case:

> "Read more broadly, **Walz** stands merely for the proposition that a state is free to provide any tax exemption scheme it wishes (as long as the classifications are not capricious or arbitrary) and that exemptions to houses of worship are included because they do not violate the religious clauses of the First Amendment.
> "**Walz** makes no attempt to define what kinds of property may or may not be encompassed by an exemption scheme except to say that property used solely for worship can be included. . . .
> "In short, there is nothing in the majority opinion in **Walz** which indicates that a state may not constitutionally construe its religious exemption statute to include church owned, commercially used property when the proceeds go solely to church projects."

Thus, the stage is set for the next ultimate question to be decided by this court. In **Walz**, this court apparently decided that the exclusively utilized religious property owned by a church can be exempt from ad valorem taxation without running afoul of the First and Fourteenth Amendments prohibiting the establishment of religion and guaranteeing equal protection of the laws. Now that **Walz** has been decided, the U. S. District Court has in the instant case extended the **Walz** decision to include the commercially operated businesses which happen to be owned by a church or a religious body within the tax exempt scheme. The U. S. District Court did, of course, mention the fact that the substantial profits of the commercial enterprise apparently go to church projects, but this in no way should decide the propriety of the constitutional prohibition on the establishment of religion.

Stated another way, the plaintiffs take the position that whether the church chooses to use the profits of a commercial business it owns for one use or another use is, as far as the constitutional propriety, totally irrelevant. The question simply is whether or not the profit making commercial businesses in this country, which happen to be owned by a religious body, can escape their lawful obligation to participate in the tax revenue collection of their communities. The appellants do not believe that the **Walz** decision stands for the proposition that the commercial property as well as the religious property can withstand the strictures of the establishment and equal protection clauses of the United States Constitution. Indeed, we shall go further and state candidly that to construe the First and Fourteenth Amendments as did the three judge United States District Court in the instant case is to make a mockery of the purposes intended by the applicable portions of the two constitutional amendments. Still further, it would appear that the decision of **Gibbons v. District of Columbia,** 1886, 116 U.S. 404 seems to be a limitation as cited in the opinion of the **Walz** case. The defendants argue and the U.S. District Court agrees that because the church apparently needs the parking lots for Sunday worshippers, this somehow should relieve the church for its taxation obligations pertaining to six days and six evenings of commercial operation of those same parking lots. The reasoning truly escapes us.

Your undersigned counsel does not believe that this Jurisdictional Statement is the place to dwell on the various cases interpreting the establishment clause such as **Everson v. Board of Education,** 330 U.S. 1 (1947), **McCollum v. Board of Education,** 333 U.S. 203 (1948), **Abington School District v. Schempp,** 374 U.S. 203 (1963),

Murray v. Curlett, 374 U.S. 203 (1963), and **Engel v. Vitale**, 370 U.S. 421 (1962). We would prefer to discuss these cases in a full brief on the merits and in oral argument before this Court. We do believe however that the questions presented in this case which have come about as an illogical extension of the **Walz** decision are without question very substantial and of great importance not only to Dade County, Florida, but to all regions of our country. Whether or not the commercial enterprises of religious organizations will also go tax exempt is a question which cries out for answering. We fervently hope that this Court will see fit to give the undersigned an opportunity to present a full brief and argue orally concerning the monumental importance and constitutional propriety of the issues at stake.

Respectfully submitted,

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By _____
Richard Yale Feder

PROOF OF SERVICE

I HEREBY CERTIFY that three copies of the foregoing Jurisdictional Statement were served by mail this _____ day of November, 1970 to: MERSHON, SAWYER, JOHNSTON, DUNWODY & COLE, 1600 First National Bank Building, Miami, Florida; THOMAS C. BRITTON, ESQ., Attention ST. JULIEN P. ROSEMOND, ESQ., Dade County Attorney, 1626 Dade County Courthouse, Miami, Florida 33130.

RICHARD YALE FEDER
Attorney for Appellants
Member of the Bar of
the Supreme Court of
the United States

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 69-746-Civ-JE

FLORENCE DIFFENDERFER and
NISHAN PAUL,

Plaintiffs,

v.

CENTRAL BAPTIST CHURCH OF MIAMI, FLORIDA, INCORPORATED, a non-profit Florida corporation; DADE COUNTY, FLORIDA, a political subdivision of the State of Florida; PORTER W. HOMER, County Manager; R. K. OVERSTREET, Tax Collector of Metropolitan Dade County; and FRED O. DICKINSON, JR., as Comptroller of the State of Florida,

Defendants.

Filed Aug. 21, '70

Before DYER, Circuit Judge, and MEHRTENS and EATON, District Judges.

DYER, Circuit Judge:

Plaintiffs, who are citizens and taxpayers of Dade County, Florida, seek in this action a declaration that F.S. § 192.06 (4) constitutes an establishment of religion and an inhibition on the free exercise of religion in violation of the First Amendment to the United States

Constitution insofar as it authorizes tax exemption of property of the Central Baptist Church used as a commercial parking lot.[1] They also seek an injunction ordering the Dade County Tax Collector to assess and collect taxes on that property. A three-judge was convened and the case was submitted on stipulated facts and plaintiff's motion for summary judgment. Decision was delayed pending the outcome of **Walz v. Tax Commission**, 1970, ____ U.S. ____ [No. 135, May 4, 1970], which held there is no violation of the First Amendment Religious Clauses in a state taxation scheme which exempts from taxation property "used solely for religious worship". In view of **Walz** we hold the Florida exemption scheme, as it applies to the Central Baptist Church parking lot, constitutional, we deny the motion for summary judgment and the declaratory and injunctive relief sought by the plaintiffs, and we enter judgment for the defendants.

F.S. § 192.06 provides in pertinent part:

> The following property shall be exempt from taxation:
>
> * * *
>
> (4) All houses of public worship and lots on which they are situated, and all pews or steps and furniture therein, every parsonage and all burying grounds not owned or held by individuals or corporations for speculative purposes, tombs

[1]Plaintiffs also attack the exemption of the church's parking lot on the ground that it unfairly discriminates against private operators of parking lots in the area, who are thereby put at a competitive disadvantage. Since it is not alleged that plaintiffs are themselves parking lot operators, there is no "injury in fact" to them sufficient to give them standing to raise this issue. *Data Processing Service v. Camp*, 1970, ____ U.S. ____ [No. 85, March 3, 1970, at p. 2 of slip opinion].

> and right of burial; but any building being a house of worship which shall be rented or hired for any other purpose except for schools or places of worship, shall be taxed the same as any other property.

In a prior state case, **Central Baptist Church v. Dade County, Fla.**, Fla. 1968, 216 So.2d 4, Dade County attempted to tax that portion of the church property used as a parking lot. The church resisted successfully, the Supreme Court of Florida holding the lot exempt within the terms of the above quoted statute because it found:

> [T]he limited part time rental of a portion of the church lot for commercial parking on weekday business hours is reasonably incidental to the primary use of the church property as a whole for church or religious purposes and is not a sufficiently divergent commercial use that eliminates the exemption as to the commercial parking lot portion of the property.
>
> * * *
>
> The record conclusively reflects the church devotes the net income received by it from rentals of the commercial parking lot area to religious and educational purposes.

Id. at 6.

Among the facts which the parties have stipulated to are the following:

> All revenues generated from the parking area are used for religious, educational, literary, benevolent, fraternal and/or charitable activities of the church.

None of the expenses of operating the parking area are paid by or from the revenues generated by the parking area.

The church could not operate at its present location without the off-street parking spaces in its lot because of a local ordinance which requires auditoriums to provide a certain number of off-street parking spaces dependent upon seating capacity of the auditorium.

The parking spaces in the lot "are just as necessary for the operation of the Church as the roof over the Church Building."

The property in question is located in downtown Miami and occupies nearly a complete square block. The plaintiffs do not attack the statutory scheme as it applies to the property occupied by the church building itself. They attack the exemption only as it applies (by virtue of the decision in **Central Baptist Church v. Dade County, supra**) to the 59% of the church property which is used as a commercial parking lot six days of the week. The question we must decide may therefore be framed thusly: Does the holding in **Walz v. Tax Commission, supra**,—that there is no establishment of religion and no inhibition of the free exercise of religion in a state taxation scheme which exempts from taxation property used "exclusively for religious purposes", i.e., "religious properties used soley for religious worship"—encompass the tax exemption in the instant case as it applies to church property used as a commercial parking lot? We answer affirmatively.

The holding in **Walz** is confined to exemptions for religious properties used **exclusively** for religious purposes. Implicit in the Florida Supreme Court's holding in **Central Baptist Church v. Dade County, supra,** is the conclusion that what appears to be a commercial use of church property is really a religious use because all the proceeds from the lot go to church projects and because the parking lot is necessary to the functioning of the church. The parties in this case have stipulated to this effect. In other words, the instant case may be viewed as coming within the strict terms of **Walz** because of the finding of the state court and the stipulations here that the commercial use really amounts to a religious use.

However, it is not necessary to pigeonhole the instant case into the strict terms of the solely-for-religious-worship holding of **Walz**. Read more broadly, **Walz** stands merely for the proposition that a state is free to provide any tax exemption scheme it wishes (as long as the classifications are not capricious or arbitrary) and that exemptions to houses of worship are included because they do not violate the religious clauses of the First Amendment.

Walz makes no attempt to define what kinds of property may or may not be encompassed by an exemption scheme except to say that property used solely for worship can be included. On oral argument in **Walz** plaintiff's counsel stated that he was attacking tax exemptions only as applied to "property used exclusively for religious purposes" and not other property, such as schools or hospitals operated by religious institutions, because it was only the exemption to the **worshipping activity** (and not to other church activities) which he contended created

an establishment of religion. See 38 LW 3189. Viewed in this light, it is clear that the limitation in the Walz opinion to property used exclusively for religious worship was merely a mechanism to put the case in the posture of dealing with the **ultimate** religious activity and the Supreme Court nevertheless held there was no establishment of religion and no inhibition on the free exercise thereof. A **fortiori**, a use of church property for slightly less religious purposes [the parking lot proceeds go to the church's educational and charitable activities as well as to its religious activities] does not create an establishment of religion and does not inhibit the free exercise of religion. Therefore, the exemption in the instant case is constitutional unless the classification—church property used for commercial purposes where the income goes solely to church projects—is arbitrary or capricious.

It is true that **Gibbons v. District of Columbia**, 1886, 116 U.S. 404, was cited in **Walz** as a case denying "tax exemption as to land owned by but not used for the church, but rather to produce income". Page 14 of slip opinion. However, **Gibbons** is not a bar to our reading of **Walz** or to the conclusion we reach. That case stands for no constitutional rule about church property used to produce income; it involved merely the construction of a federal statute which exempted Washington, D.C. church property from taxation but specifically provided that if such property were "used to secure a rent or income" it would be taxed like any other property.

In short, there is nothing in the majority opinion in **Walz** which indicates that a state may not constitutionally construe its religious exemption statute to include church-owned, commercially used property when the proceeds go

solely to church projects.[2] Nor do we think that such an inclusion within the tax exemption scheme is arbitrary or capricious. Accordingly, we hold that F.S. 192.06(4) constitutionally encompasses the 59% of the Central Baptist Church's property utilized six days a week as a commercial parking lot. Plaintiffs' motion for summary judgment is denied, as is the relief sought by plaintiffs, and judgment will be entered for all the defendants.

EATON, J. (concurring specially).

Plaintiffs say that to exempt the Central Baptist Church of Miami, Florida, Inc. from paying real property taxes on approximately 75,000 square feet of land, consisting of 290 parking spaces, operated six days of each week as a commercial parking lot constitutes an establishment of religion, effects a prohibition of the free exercise of religion, and denies the Plaintiffs equal protection of the law.

---

[2]In fact, the concurring opinions of Justices Brennan and Harlan affirmatively assert that religious tax exemptions extend to *all* church property:

> Any assumption that a church building itself is used for exclusively religious activities, however, rests on a simplistic view of ordinary church operations. . . . [T]he funds used to maintain the facilities as a place for religious worship and study also maintain them as a place for secular activities beneficial to the community as a whole. Even during formal worship services, churches frequently collect the funds used to finance their secular operations and make decisions regarding their nature.

Brennan concurring opin. at p. 9.

Justice Harlan's concurrence also supports the conclusion that the exemption necessarily encompasses all church property. He views the tax exemption scheme as applying to religious *organizations* as part of a class of nontaxable *entities* whose common denominator is their nonprofit pursuit of activities devoted to cultural and moral improvement. See p. 3 of his opinion.

Whatever else may be said about this exemption, it cannot be said, in view of Walz v. Tax Commission, 1970, ____ U.S. ____, 25 L.Ed. 2d 697, 90 S.Ct. ____, that the exemption constitutes an establishment of religion or effects a prohibition of the free exercise of religion.

If tax exemption granted on property used solely for religious worship does not constitute an establishment of religion or effect a prohibition of the free exercise thereof, then a tax exemption granted on property used as a profit-making parking lot does not.

To whatever extent each taxpayer in the urban Florida county of Dade is affected by this exemption, the fact is that every taxpayer is affected—including the members of the Church who pay real property taxes on their own Dade County property. The case does not present an "equal protection" proposition.

I must, therefore, concur.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 69-746-Civ-JE

FLORENCE DIFFENDERFER and
NISHAN PAUL,

Plaintiffs,

vs.

CENTRAL BAPTIST CHURCH OF MIAMI, FLORIDA, INCORPORATED, a non-profit Florida corporation; DADE COUNTY, FLORIDA, a political subdivision of the State of Florida; PORTER W. HOMER, County Manager; R. K. OVERSTREET, Tax Collector of Metropolitan Dade County, and FRED O. DICKINSON, JR., as Comptroller of the State of Florida,

Defendants.

FINAL JUDGMENT

By Opinion order dated August 21, 1970, this Court ruled that the issues herein are in favor of the defendants and against the plaintiffs, that plaintiffs' motion for summary judgment is denied, and that judgment be entered accordingly in defendants' favor.

NOW THEREFORE, the Court being fully advised in the premises, it is

ORDERED, ADJUDGED and DECREED that plaintiffs' motion for summary judgment be and the same hereby is denied; it is further

ORDERED, ADJUDGED and DECREED that Florida Statute, Section 192.06(4) constitutionally encompasses the 59% of the Central Baptist Church's property utilized six days a week as a commercial parking lot. Final judgment is therefore hereby entered against plaintiffs as to all issues raised by their complaint and in favor of all defendants. The parties shall bear their own costs.

DONE and ORDERED at Miami, Florida, this 5 day of October, 1970.

DAVID W. DYER

Circuit Judge

W. O. MEHRTENS

District Judge

JOE EATON

District Judge

APPENDIX C

SUPREME COURT OF FLORIDA.

No. 37884.

CENTRAL BAPTIST CHURCH OF MIAMI, FLORIDA, INCORPORATED, a non-profit Florida corporation,

Appellant,

vs.

DADE COUNTY, Florida, a political subdivision of the State of Florida, Porter W. Homer, as County Manager of Metropolitan Dade County, R. K. Overstreet, as Tax Collector of Metropolitan Dade County, and Fred O. Dickinson, Jr., as Comptroller of the State of Florida,

Appellees.

Nov. 27, 1968.

Action by church to enjoin collection of real estate taxes. The Circuit Court, Dade County, William A. Herin, J., denied relief and church appealed. The Supreme Court, Ervin, J., held that limited part-time rental of portion of church lot for commercial parking during weekday business hours was reasonably incidental to primary use of church property as whole for church or religious purposes and was not sufficiently divergent commercial use that eliminated tax exemption as to commercial parking lot portion of property.

Reversed with directions.

Caldwell, C. J., and Thomas, J., dissented.

1. Taxation Key 193

Statutory grant of tax exemption to church property complies with constitutional requirments relating thereto. F.S.A. Const. art. 16, § 16; F.S.A. § 192.06.

2. Taxation Key 244

Statute relating to exemption of church property from taxation grants ad valorem tax exemption to church property when it is used for church or religious purposes. F.S.A. § 192.06(4).

3. Taxation Key 244

Limited part-time rental of portion of church lot for commercial parking on weekday business hours was reasonably incidental to primary use of church property as whole for church or religious purposes and was not sufficiently divergent commercial use that eliminated tax exemption as to commercial parking lot portion of property. F.S.A. § 192.06(4).

4. Taxation Key 204(2)

Court would not interpret language into statute granting church property exemption from taxation since any material change in exemption statute, if advisable, should be made by Legislature. F.S.A. § 192.06(4).

Herbert S. Sawyer of Mershon, Sawyer, Johnston, Dunwody & Cole, Miami, for appellant.

Thomas C. Britton, County Atty., and Stuart Simon, Asst. County Atty., for appellees.

ERVIN, Justice.

This appeal was transferred here by the District Court of Appeal, Third District, since it appeared to that court the final decree of the Circuit Court of Dade County, Florida construed. Section 16, Article XVI of the State Constitution, F.S.A. Our inspection of the decree confirms the transfer of the appeal was in order and we accept jurisdiction of it.

Appellant, Central Baptist Church of Miami, Florida, Inc., is a nonprofit Florida corporation which owns virtually an entire city block in downtown Miami on which its church building is located. A large part of the ownership not used for the church building is utilized as a parking area, a small portion being reserved at all times for the parking of the cars of the pastor and other members of the church staff. During weekday business hours the parking area, except for the small portion reserved at all times for the church staff, is rented out and used as a commercial parking lot, the net income from which is devoted in its entirety by the church to its world missions and education program. On Sundays and evenings the parking area serves as a free parking facility for congregants during hours of church services and church related activities.

Percentagewise, 41% of the church property is occupied by church buildings and 59% is maintained for parking area.

In respect to the practical problems and necessities involved, the Appellant church corporation made an evidentiary showing that as its congregation grew it was necessary over the past several years for it to acquire with church funds additional lots in the block where its church building is situated for its congregants' car parking. Since the large parking area it acquired is idle of congregant parking during weekday business hours, Appellant deemed it reasonable to share its parking area and accommodate public parking in downtown Miami where traffic is congested and parking space is limited. In this way its parking area serves a dual church and public purpose and Appellant is enabled from the income derived from public parking to augment its funds allocated to world missions and religious education. In this respect the trial judge found and set forth in his decree:

> "* * * A large and beautiful Church known as the Central Baptist Church of Miami stands on the property. On the aforesaid city block and adjacent to the Church Building is a substantial parking area * * *. The major portion of the parking area is used on Sundays and in the evenings as a gratuitous parking facility by congregants during the hours that Church services and other Church activities are taking place upon the Church property. In this era of motor travel it is conceded that ample parking facilities are essential to meet the needs of a modern downtown Church, and the Court recognizes that

> the plaintiff [Appellant] has frequently had to rent many additional nearby parking spaces to accommodate its worshipers. During weekday business hours however the parking area, save for the small portion reserved at all times for Church officials, is used as a commercial parking lot."

County taxing officials deem the property exempt from ad valorem taxation except for the portion used as a commercial parking lot on weekdays. The entire parking area was first assessed for ad valorem taxes in 1965 and the taxes were paid under protest. In 1966 an assessment was imposed on the parking area of $150,000 and the tax levied on this assessment came to $3,416.25.

Appellant's application for exempt status for its parking lot was denied by the Tax Assessor of Dade County; and the Board of County Commissioners of Dade County, sitting as a Board of Equalization, sustained the Tax Assessor's denial of exempt status.

Appellant initiated proceedings in the Circuit Court to enjoin collection of the assessed taxes. The trial court entered summary judgment in favor of the County as to that portion of the parking area used for commercial parking during weekday business hours.

We reverse the final decree.

F.S. Section 192.06, F.S.A. appears to be applicable to the question presented by the appeal. It reads in part as follows:

"192.06 **Property exempt from taxation.** — The following property shall be exempt from taxation:

* * *

"(4) All houses of public worship and lots on which they are situated, and all pews or steps and furniture therein, every parsonage and all burying grounds not owned or held by individuals or corporations for speculative purposes, tombs, and right of burial; but any building being a house of worship which shall be rented or hired for any other purpose except for schools or places of worship, shall be taxed the same as any other property."

[1] This section in granting tax exemption to church property complies with the requirements of Section 16, Article XVI, State Constitution, as construed in Jasper v. Mease Manor, Inc. (Fla.), 208 So.2d 821.

Finding there is a general statutory exemption of property used for church or religious purposes consistent with said constitutional provision, we turn to an interpretation of such statutory exemption as it applies to the situation in this case.

[2, 3] We find the statute grants ad valorem tax exemption to Appellant's property when it is used for church or religious purposes. We further find the limited part time rental of a portion of the church lot for commercial parking on weekday business hours is reasonably incidental to the primary use of the church property as a whole for church or religious purposes and is not a

sufficiently divergent commercial use that eliminates the exemption as to the commercial parking lot portion of the property.

Our reasons for this interpretation are as follows: In the first place, the concluding proviso of paragraph (4) of Section 192.06, literally read, lifts the exemption granted church property only from the building that is the house of worship when it is rented. It does not purport in terms to remove the exemption from rented church land adjacent the house of worship building. But less technically and more practically, it does not appear that the Legislature intended by the language of Section 192.06 (4) to remove the church property tax exemption where the rental of a portion of a church lot is limited in nature and does not result in the portion rented being placed beyond its regular and customary church use, and the rental funds derived are used for purposes contemplated by Section 16, Article XVI, State Constitution. The legislative wisdom and policy of the statute are that if certain church related property (parsonages and burying grounds) is held by private persons for speculative purposes or if the house of worship itself is rented for a nonworship or nonschool purpose, these are diversions from church use sufficient in degree to warrant lifting the tax exemption. However, lesser and more limited divergent uses of church property are apparently not deemed by the Legislature sufficiently inconsistent with church purposes to lift the exemption, provided the funds derived from such uses are not diverted to purposes not contemplated by Section 16, Article XVI.

Until 1965 no attempt had been made by the county taxing authorities to impose ad valorem taxes on the

portion of Appellant's property rented for commercial parking purposes. Furthermore, we find no amendments to F.S. Section 192.06, F.S.A., including Chapter 65-438 (relating to exemptions for homes for the aged), which modify the prior administrative construction of the county taxing authorities that the portion of Appellant's church lot rented for commercial parking was exempt from taxation. The record conclusively reflects the church devotes the net income received by it from rentals of the commercial parking lot area to religious and educational purposes. If similar income were so devoted by any of the institutions referred to in F.S. Section 192.06(3), F.S.A., the property (if owned or held by any of such institutions) from which it was derived would be tax exempt. Such institutions under Section 192.06(3) may rent, from the property actually occupied and used by them for the purposes for which they are organized,

> "* * * not more than seventy-five (75%) per cent of the floor space of said building or property * * * and the rents, issues, and profits of said property are used for the educational, literary, benevolent, fraternal, charitable or scientific purposes of said institutions * * *"

Since there is nothing in Section 192.06(4) which purports to remove the tax exemption from church lot property under limited, part-time rental, and the rental use is not inconsistent with the normal church use of such lot property, we see no objection to an administrative tax ruling that the exemption remains so long as the funds derived from the rental are devoted to the purposes contemplated by Section 16 of Article XVI.

We reiterate that our opinion is restricted to an interpretation of F.S. Section 192.06(4), F.S.A., as it applies to the particular facts of this case. Tax exemption of church property generally is granted thereby; once granted by the Legislature, its application then becomes a matter subject to interpretation.

[4] Section 192.06(4) does not contain apt language removing the general exemption covering church lots or grounds used as such when they are rented part time. Only through judicial interpretation by way of analogy could we treat part-time rental of church lots the equivalent of rental of houses of worship and remove the exemption. But the statue does not go that far. On the other hand, in considering the matter we are confronted by the treatment accorded properties of those institutions coming under Section 192.06(3) when they are rented, and the claim that Appellant is not deprived of analogous treatment by Section 192.06(4). Under these conditions we think it wisdom on our part not to interpolate language into Section 192.06(4) that would lift the exemption claimed by Appellant in this case, since any material change in the exemption statute, if advisable, lies more appropriately in the legislative province. Moreover, it is difficult because of equitable principles to accord different exemption treatment to churches than is accorded the other institutions under Section 16, Article XVI, and especially so where tax exemption is granted church property by statute and the exemption granted therein is not expressly removed by the statute in all instances where church properties are rented.

The decree of the Circuit Court is reversed with direction that a decree consistent with this opinion and judgment be entered in lieu thereof.

It is so ordered.

ROBERTS DREW, THORNAL and HOPPING, JJ., concur.

CALDWELL, C. J., and THOMAS, J., dissent.

APPENDIX D

(3) Such property of education, literary, benevolent, fraternal, charitable and scientific institutions within this state as shall be actually occupied and used by them for the purpose for which they have been or may be organized; provided, not more than seventy-five per cent of the floor space of said building or property is rented and the rents, issues and profits of said property are used for the educational, literary, benevolent, fraternal or charitable purposes of said institutions; provided, further, that nothing in this subsection shall be construed as applying to special assessment by municipalities for sidewalks, curbing, street paving or other local improvements.

(4) All houses of public worship and lots on which they are situated, and all pews or steps and furniture therein, every parsonage and all burying grounds not owned or held by individuals or corporations for speculative purposes, tombs and right of burial; but any building being a house of worship which shall be rented or hired for any other purpose except for schools or places of worship, shall be taxed the same as any other property.

* * *

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NO. 69-746-Civ-JE

FLORENCE DIFFENDERFER and NISHAN PAUL,
Plaintiffs,

v.

CENTRAL BAPTIST CHURCH OF MIAMI, FLORIDA, INCORPORATED, a non-profit Florida corporation, DADE COUNTY, FLORIDA, a political subdivision of the State of Florida; PORTER W. HOMER, County Manager; R. K. OVERSTREET, Tax Collector of Metropolitan Dade County, Florida; and FRED O. DICKINSON, JR., as Comptroller of the State of Florida,

Defendants.

AMENDED NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

I. Notice is hereby given that FLORENCE DIFFENDERFER and NISHAN PAUL, the plaintiffs above named, hereby appeal to the Supreme Court of the United States from the Final Judgment entered for the defendants on October 5, 1970.

This appeal is taken pursuant to 28 U.S.C.A. §1253.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the entire record in this cause.

III. The following questions are presented by this appeal:

A. Do the First and Fourteenth Amendments to the United States Constitution forbid governmental tax exemption to extend to church owned commercial business enterprises?

(1) Does the tax exemption granted by the defendant, DADE COUNTY, FLORIDA, to the defendant, CENTRAL BAPTIST CHURCH OF MIAMI, FLORIDA, on real property utilized six days and evenings of each week for commercial profit making purposes violate the First and Fourteenth Amendments to the United States Constitution prohibiting the establishment of religion and protecting the free exercise thereof?

HOWARD J. HOLLANDER
BERNARD C. PESTCOE and
RICHARD FEDER
Attorneys for Plaintiffs
c/o AMERICAN CIVIL
LIBERTIES UNION
708 City National Bank Building
Miami, Florida, 33130

BY: _____

PROOF OF SERVICE

I, RICHARD FEDER, one of the attorneys for the appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 7th day of October, 1970, I served copies of the foregoing Amended Notice of Appeal to the Supreme Court of the United States on the several parties thereto as follows: MERSHON, SAWYER, JOHNSTON, DUNWODY & COLE, 1600 First National Bank Building, Miami, Florida: THOMAS C. BRITTON, ESQ., Attention St. Julien P. Rosemond, Esq., Dade County Attorney, 1626 Dade County Courthouse, Miami, Florida 33130.

_____

Attorney